

MONTANA LEGISLATIVE HISTORY

Chapter 154 19 93

Bill H 259 S _____ Original bill & history ☒ C

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s) Feb 04 ☒ C

Hearing Date(s) Mar 04 ☒ C

Feb 09 ☒ C

Mar 09 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 10 ☒ C

Mar 10 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1/27 HEARING
 1/28 FISCAL NOTE PRINTED
 2/02 TABLED IN COMMITTEE

HB 258 INTRODUCED BY TOOLE, ET AL.

EXCLUDE FROM INTERIM EARNINGS DEDUCTION IN SUCCESSFUL
 WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO REASONABLE
 COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT

1/19	INTRODUCED		
1/20	REFERRED TO JUDICIARY		
1/20	FIRST READING		
1/29	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	62	35
2/10	3RD READING PASSED	69	28
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO JUDICIARY		
3/15	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	2ND READING CONCURRED	47	0
3/20	3RD READING CONCURRED	42	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	88	8
4/02	3RD READING AMENDMENTS CONCURRED	76	23
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 442		
	EFFECTIVE DATE: 10/01/93		

HB 259 INTRODUCED BY SCHWINDEN, ET AL.

CLARIFY THAT EMPLOYEE INJURED WHILE PARTICIPATING IN
 RECREATIONAL ACTIVITY IS NOT ENTITLED TO WORKERS'
 COMPENSATION

1/19	INTRODUCED		
1/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/20	FIRST READING		
2/04	HEARING		
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	98	2
2/16	3RD READING PASSED	97	3
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/04	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	48	0
3/12	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/16	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 154		
	EFFECTIVE DATE: 10/01/93		

HOUSE BILL NO. 259

INTRODUCED BY SCHWINDEN, ELLIS, WALLIN, HARPER,
B. BROWN, CHRISTIAENS

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 11, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 12, 1993	PRINTING REPORT.
FEBRUARY 13, 1993	SECOND READING, DO PASS.
FEBRUARY 15, 1993	ENGROSSING REPORT.
FEBRUARY 16, 1993	THIRD READING, PASSED. AYES, 97; NOES, 3.
FEBRUARY 17, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 10, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1993	SECOND READING, CONCURRED IN.
MARCH 12, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 13, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

House BILL NO. 259

INTRODUCED BY

Schmid, Ed. Wicks

Rep. Bob Brown Christine

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT AN EMPLOYEE OF A SKI AREA OPERATOR IS NOT ENTITLED TO WORKERS' COMPENSATION IF INJURED AT THE SKI AREA AT A TIME WHEN THE EMPLOYEE IS NOT WORKING OR WHEN THE EMPLOYEE IS WORKING BUT IS NOT ACTING IN THE SCOPE AND COURSE OF EMPLOYMENT; AND AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, workman, and volunteer firefighter defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such the corporations for pay. Casual employees as defined by 39-71-116 are included

as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in

subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(2) The terms defined in subsection (1) do not include a person who is employed by a ski area operator, as that term is defined in 23-2-732, to work at the ski area and who:

(a) is working but not acting in the scope and course of employment; or

(b) is on the premises at a time other than the

person's work hours.

{2}{3} The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

{3}{4} (a) If the employer is a partnership or sole proprietorship, such the employer may elect to include as an employee within the provisions of this chapter any member of such the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection {3}{d} {4}{d}. A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium

1 ratemaking and for the determination of weekly wage for
2 weekly compensation benefits, the electing employer may
3 elect not less than \$900 a month and not more than 1 1/2
4 times the average weekly wage as defined in this chapter.

5 {4}(5) The trustees of a rural fire district, a county
6 governing body providing rural fire protection, or the
7 county commissioners or trustees for a fire service area may
8 elect to include as an employee within the provisions of
9 this chapter any volunteer firefighter. A volunteer
10 firefighter who receives workers' compensation coverage
11 under this section may not receive disability benefits under
12 Title 19, chapter 12.

13 {5}(6) An employee, workman, or worker in this state
14 whose services are furnished by a person, association,
15 contractor, firm, or corporation, other than a temporary
16 service contractor, to an employer as defined in 39-71-117
17 is presumed to be under the control and employment of the
18 employer. This presumption may be rebutted as provided in
19 39-71-117(3).

20 {6}(7) For purposes of this section, an "employee,
21 workman, or worker in this state" means:

22 (a) a resident of Montana who is employed by an
23 employer and whose employment duties are primarily carried
24 out or controlled within this state; or

25 (b) a nonresident of Montana whose principal employment

1 duties are conducted within this state on a regular basis
2 for an employer."

3 **Section 2.** Section 39-71-123, MCA, is amended to read:

4 "39-71-123. **Wages defined.** (1) "Wages" means the gross
5 remuneration paid in money, or in a substitute for money,
6 for services rendered by an employee. Wages include but are
7 not limited to:

8 (a) commissions, bonuses, and remuneration at the
9 regular hourly rate for overtime work, holidays, vacations,
10 and sickness periods;

11 (b) board, lodging, rent, or housing if it constitutes
12 a part of the employee's remuneration and is based on its
13 actual value; and

14 (c) payments made to an employee on any basis other
15 than time worked, including but not limited to piecework, an
16 incentive plan, or profit-sharing arrangement.

17 (2) Wages do not include:

18 (a) employee expense reimbursements or allowances for
19 meals, lodging, travel, subsistence, and other expenses, as
20 set forth in department rules;

21 (b) special rewards for individual invention or
22 discovery;

23 (c) tips and other gratuities received by the employee
24 in excess of those documented to the employer for tax
25 purposes;

1 (d) contributions made by the employer to a group
2 insurance or pension plan; or

3 (e) vacation or sick leave benefits accrued but not
4 paid.

5 (3) For compensation benefit purposes, the average
6 actual earnings for the four pay periods immediately
7 preceding the injury are the employee's wages, except if:

8 (a) the term of employment for the same employer is
9 less than four pay periods, in which case the employee's
10 wages are the hourly rate times the number of hours in a
11 week for which the employee was hired to work; or

12 (b) for good cause shown by the claimant, the use of
13 the four pay periods does not accurately reflect the
14 claimant's employment history with the employer, in which
15 case the insurer may use additional pay periods.

16 (4) (a) For the purpose of calculating compensation
17 benefits for an employee working concurrent employments, the
18 average actual wages must be calculated as provided in
19 subsection (3).

20 (b) The compensation benefits for a covered volunteer
21 must be based on the average actual wages in his the
22 volunteer's regular employment, except self-employment as a
23 sole proprietor or partner who elected not to be covered,
24 from which he the volunteer is disabled by the injury
25 incurred.

1 (c) The compensation benefits for an employee working
2 at two or more concurrent remunerated employments must be
3 based on the aggregate of average actual wages of all
4 employments, except self-employment as a sole proprietor or
5 partner who elected not to be covered, from which the
6 employee is disabled by the injury incurred.

7 (5) The compensation benefits and the payroll, for
8 premium purposes, for a volunteer firefighter covered
9 pursuant to 39-71-118~~4~~ must be based upon a wage of not
10 less than \$900 a month and not more than 1 1/2 times the
11 average weekly wage as defined in this chapter."

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Tom Nelson, on February 4, 1993, at
3:10 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: Rep. Benedict

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 287, HB 259 & SB 116
Executive Action: SB 116, HB 261, HB 296

HEARING ON HB 259

Opening Statement by Sponsor:

REP. DORE SCHWINDEN, HD 20, Roosevelt, sponsor, opened on HB 259 by handing out amendments (EXHIBITS #1 & #2). He stated that this bill just states that if an employee is injured while recreating, he/she is not covered. He stated that it is not fair to pay someone Workers' Compensation if they are not on duty when injured.

Proponents' Testimony:

Lobbyist Pat Melby, Ski Area Association, stated that he was asked to introduce this bill to the committee. He stated that employees of a ski resort are usually given a seasonal pass as part of their payment. This bill is a common sense bill. A number of states have already adopted similar legislation.

He referred to the amendments (EXHIBITS #1 & #2) subparagraph (a). and stated that while visiting with the members of the state fund, they determined that this bill would have been limited to ski area employees, but may have constitutional problems, so it was expanded to other recreational activities.

George Willen, Showdown Ski Area, stated that his ski resort has been the victim of an off-duty employee who was injured. The total claim cost the ski resort \$40,000. The employee is currently using the money to attend school. This costly claim will make us raise our rates.

Kevin Taylor, Great Divide Skiing Company, stated that they offer seasonal passes to their employees also. He stated one of the cases they had on the mountain by an off-duty employee who had only earned \$7.40 when he broke his leg and the ski resort had to pay \$4,200.

Usually these employees are young, single and very daring. These employees should not be able to claim benefits if they are skiing dangerously on their off-time.

Ken Hoovestol, Montana Snowmobile Association and Montana Boating Association, stated that he supports HB 259 for the reasons already stated.

James Tutwiler, Montana Chamber of Commerce, stated that this bill is fair and needed. This bill doesn't alter the employers ability to pay if an accident happens on-the-job, but it allows them to protect themselves. Now is the time to tighten accessibility to the system. I urge the committee to support HB 259.

Tim Prather, Red Lodge Mountain, stated that in the last ten years, he has had three Workers' Compensation claims that dealt with off-duty employees. These claims include one ski lift operator (\$43,000), and two ski instructors (\$14,000 and \$43,000).

They would have a difficult time recruiting people for these jobs if they did not offer a seasonal ski pass as a benefit of employment. He urged the committee to support HB 259.

Jim Murphy, State Fund, stated that he has reviewed the amendments and recommends that the bill be passed with the added amendments.

Jacqueline Lenmark, American Insurance Association, stated that for Workers' Compensation to function like it was intended, these employees must only be covered if injured on duty. She stated that she supports HB 259.

Michael Collins, President of Montana Ski Area Association, (EXHIBIT #3).

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. COCCHIARELLA asked Mr. Murphy if this bill passed as amended, would the employee left on the ski lift at Marshal Ski Area, who had to jump from the ski lift, been covered by Workers' Compensation.

Mr. Murphy stated that yes, this employee would be covered.

REP. FELAND asked Mr. Prather if this pass is considered part of the employees pay?

Prather stated that it is just one of the benefits.

REP. FELAND asked if an employee is hurt while using a pass that is part of his pay, would he be considered an employee?

Mr. Prather stated that yes, he is an employee; however, he was not hurt in the line of duty.

REP. FELAND asked if these employees sign in or punch in on a time clock to confirm when they are on duty.

Mr. Prather stated that yes, they do punch in and out.

REP. FELAND asked Mr. Murphy the same question.

Mr. Murphy stated that Mr. Prather was correct in stating that if an employee is punched in when the accident occurs they will be covered.

REP. PAVLOVICH gave Mr. Murphy a scenario of a golf course grounds keeper who is hit in the head with a golf ball when mowing the lawn. He asked if this employee would be covered.

Mr. Murphy stated that he is covered if on duty, but not if he was golfing himself, even though the seasonal golf pass is a benefit of his employment.

REP. GALVIN asked Mr. Murphy if this bill only refers to ski resorts.

Mr. Murphy stated that the amendment refers to all recreational activities.

REP. GALVIN asked Mr. Murphy if any of these awards include hospital claims.

Mr. Murphy stated that it includes Workers' Compensation, but not to another hospital.

REP. TASH asked Mr. Taylor if the ski patrols are paid.

Mr. Taylor stated that some of these patrols are paid and some are not.

REP. WHALEN asked Mr. Murphy if under the current system this doesn't already exist.

Mr. Murphy stated that various court cases have ruled that when injured, regardless if one is on or off duty, that employee is covered. Several other states already have changed their state laws.

REP. WHALEN asked Mr. Murphy what the reason for the courts' decisions has been.

Mr. Murphy stated that the courts ruled that these seasonal passes were part of the pay of the employee and that the employee needed these passes to maintain physical fitness or to improve their skiing skills.

REP. DRISCOLL asked Mr. Melby what a volunteer employee is.

Pat Melby stated that there is not such a thing. Furthermore, the definition of employee is being amended. Volunteers aren't covered currently under Workers' Compensation. He referred to the laws of the other states and then referred to subsection (b) of the bill.

Jan Van Riper stated that her concern with redefining employee is that now volunteers are not automatically covered unless the employer elects to cover them.

REP. DRISCOLL asked Mr. Melby if this statement by Van Riper is correct. He stated that if it is true, volunteer ski patrols are not paid and employed ski patrols are paid. Both do the exact same job but one is paid and one is not.

Mr. Melby stated that is how it happens today. Volunteers usually don't want to be covered by Workers' Compensation.

REP. ELLIS gave Mr. Melby a scenario of a sportsman who gets hurt crossing a fence while working for Fish, Wildlife and Parks. If it results in lengthy litigation, how do the amendments to this bill affect this situation?

Mr. Melby asked if it was a workers compensation settlement? He further stated that if this person volunteered, he wouldn't be

covered unless the employer elected to cover him.

REP. WHALEN asked Ms. Van Riper the way the bill is currently drafted, if the volunteers are available to work. If not, he asked if she could suggest wording that would include this.

Ms. Van Riper referred to the language in the amendment, and stated that there is nothing in the law allowing the employer to elect covering these volunteers for Workers' Compensation. Furthermore, she suggested changing the language.

REP. ELLIS asked Ms. Van Riper if this bill only applies to recreational facilities. He asked if an employee working on a fence line is hurt on that fence line while hunting, will they be covered?

Ms Van Riper stated that initially this bill was directed at ski areas; however, they decided to expand it. She stated that if the employee was not doing official business, the injured employee would not be covered.

REP. TASH asked REP. SCHWINDEN if the intent of this bill was originally directed at ski area.

REP. SCHWINDEN stated that yes; however, it became apparent that this is a much larger issue that needs to be covered. Not just ski areas, but anyone on their own time recreating needs to be addressed in this bill.

REP. TASH asked REP. SCHWINDEN if in regard to volunteer ski patrols, this bill will see to it that they will not be covered by workers compensation.

REP. SCHWINDEN stated that this is not the intent of the bill.

REP. GALVIN asked REP. SCHWINDEN what the effective date of this bill will be if it is passed.

REP. SCHWINDEN stated that the effective date will be October 1, 1993.

Closing by Sponsor:

REP. SCHWINDEN closed on HB 259 by stating that he is pleased with the number of proponents that testified today. He stated that he has been a long-time supporter of employee rights; however, this should be a personal responsibility.

HEARING ON HB 287

Opening Statement by Sponsor:

REP. WISEMAN, HD 33, Malmstrom AFB, sponsor, stated that this bill's purpose is a small provision to Workers' Compensation. He

HOUSE OF REPRESENTATIVES.

LABOR

COMMITTEE

ROLL CALL

DATE _____

2/4/93

[illegible]

Amendments to House Bill No. 259
First Reading Copy

EXHIBIT #1
DATE 2/4/93
SB HB 259

Requested by Representative Schwinden
For the Committee on Labor and Employment Relations

Prepared by Paul Verdon
January 28, 1993

1. Title, line 5.

Strike: "OF A SKI AREA OPERATOR"

Insert: "INJURED WHILE PARTICIPATING IN A RECREATIONAL ACTIVITY"

2. Title, lines 6 through 8.

Following: "COMPENSATION" on line 6

Strike: the remainder of line 6 through "EMPLOYMENT" on line 8

3. Page 3, line 20 through page 4, line 1.

Following: "is" on page 1, line 20

Strike: the remainder of line 20 through "hours" on page 4, line
1

Insert: ":

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities"

HOUSE BILL NO. 259
With Representative Schwinden's Proposed Amendments
Incorporated at Page 3, line 19, through
Page 4, line 1

(2) The terms defined in subsection (1) do not include
a person who is employed by a ski area operator, as that
term is defined in 23-2-732, to work at the ski area and
who:

(a) is working but not acting in the scope and course
of employment; or

(b) is on the premises at a time other than the
person's work hours. :

(a) participating in recreational activity and who at
the time is relieved of and is not performing prescribed
duties, regardless of whether the person is using, by dis-
count or otherwise, a pass, ticket, permit, device, or other
emolument of employment; or

(b) performing voluntary service at a recreational
facility and who receives no compensation for those services
other than meals, lodging, or the use of the recreational
facilities.

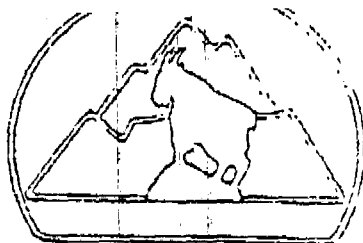


EXHIBIT #3

Rm 4
#3

EXHIBIT
DATE 2/14/93
HB 259

THE BIG MOUNTAIN

Ski & Summer Resort
P.O. Box 1400
Whitefish, MT 59937

THE BIG MOUNTAIN
FAX TRANSMITTAL SHEET

SENDING TO: Labor & Employment Rel. Comm.
ATTENTION: Tom Nelson, Chair
FAX NUMBER: 444-4105

FROM: Michael Collins (FAX# 406/862-1467)

TIME 1:05 DATE: 2/2/93

NUMBER OF PAGES (including cover sheet): 2

If there is a problem with this transmission, please call
(406) 862-3511.

MESSAGE: _____

Please deliver ASAP.

Please insure that all Committee
members get copies.

Thanks,
M. Collins



February 2, 1993

Tom Nelson, Chair
The Committee Members
Labor and Employment Relations Committee
Capitol Station
Helena, MT 59620
Fax: 444-4103

Dear Chairman Nelson and Committee Members:

RE: House Bill 259

On behalf of the members of the Montana Ski Areas Association, I would like to express strong support for House Bill 259.

The ski industry is a major contributor to Montana's economy. One limitation that currently has the power to drive Montana ski areas out of business is the loose interpretation of what constitutes a "working injury" or "employee injury" while skiing at a resort. It is critical that we differentiate between employees injured while recreating and those injured in their line of work. Workers' Compensation rates are being driven steadily higher by claims being awarded to employees injured while skiing off-duty, or to volunteers helping out by their own choice.

We are willing to pay for legitimate coverage of working injuries, but we cannot afford to support benefits for those individuals who are injured while skiing when that is not part of their job description or who are injured outside work hours. We cannot control an employee's behavior in a public area (the ski resort) while he or she is not under supervision. It follows that we should not be held responsible for their injuries under these circumstances.

I would like to emphasize how strongly we as an industry feel about this issue.

Sincerely,

Michael Collins

Michael Collins
President

Montana Ski Areas Association

Montana Ski Areas Association

P.O. Box 1123 * Red Lodge, Montana 59068-1123

Tele: (406) 446-2800 * Fax: 446-2513

"Let's ski
them all"

Bear Paw Ski Bowl
(406) 265-8404

Big Sky Montana
(406) 995-4211

Brudger Bowl
(406) 587-2111

Discovery Basin
(406) 563-2184

Great Divide
(406) 449-3746

Lookout Pass
(208) 744-1301

Lost Trail
(406) 821-3211

Marshall Ski Area
(406) 258-6619

Maverick Mountain
(406) 834-3454

Montana Snowbowl
(406) 549-9777

Red Lodge Mountain
(406) 446-2610

Rocky Mountain Hi
(406) 466-2422

Showdown
(406) 236-5522

Sleeping Giant
(307) 587-4044

The Big Mountain
(406) 862-3511

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor COMMITTEE BILL NO. HB 259
DATE Feb. 4, 1993 SPONSOR(S) Schwinden
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOS
Pat Melby	Mont. Ski Area Assn	✓	
George Willett	Shenandoah Ski Area	✓	
Kevin Taylor	Great Divide Skiing Co.	✓	
Tim Prather	Red Lodge Mountain	✓	
Terry Abelin	Bridger Bowl	✓	
Ken Hoovestel	MT Snowmobile Assn. MT Boating Assn.	✓	
Jim Murphy	State Hunt	✓	
Jim Twister	MT CHAMBER	✓	
Gregg J. Benmark	Am. Insurance Assoc.	✓	
U			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

will burn just as fast as the hourly wages will if you put them in a fire.

He stated that this bill will shift from employers who pay high wages to those who pay low wages not from big to little employers.

He stated that the risk of injury gets greater as employees work more than eight hours per day.

EXECUTIVE ACTION ON HB 445

Motion: REP. PAVLOVICH MOVED HB 445 DO PASS.

Discussion: None

Motion/Vote: The question was called for. A voice vote was taken. The motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 259

Motion: REP. BENEDICT MOVED HB 259 DO PASS AS AMENDED.

Discussion:

REP. WHALEN asked REP. BENEDICT what the amendment meant. He stated that he has a problem with changing the wording to all recreational activities. He asked if this was defined anywhere.

REP. HANSON stated that these amendments came from other people that are concerned with passage of this bill due to constitutional reasons. He stated that he supports the amendments.

Discussion:

Motion/Vote: REP. FELAND called for the question. The motion DO PASS AS AMENDED CARRIED unanimously.

EXECUTIVE ACTION ON HB 332

Motion: REP. ELLIS MOVED HB 332 MOVED THE BILL.

Discussion:

Susan Fox, the Legislative Council, read the proposed amendments. She also referred to page 2, line 20.

REP. ELLIS asked Ms. Fox if these amendments had anything to do with what George Wood had mentioned during the hearing on HB 332.

HOUSE OF REPRESENTATIVES.

LABOR

COMMITTEE

ROLL CALL

DATE _____

2/9/11

[illegible]

HOUSE STANDING COMMITTEE REPORT

February 10, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 259 (first reading copy -- white) do pass as amended.

Signed: _____
Tom Nelson, Chair

And, that such amendments read:

1. Title, line 5.

Strike: "OF A SKI AREA OPERATOR"

Insert: "INJURED WHILE PARTICIPATING IN A RECREATIONAL ACTIVITY"

2. Title, lines 6 through 8.

Following: "COMPENSATION" on line 6

Strike: the remainder of line 6 through "EMPLOYMENT" on line 8

3. Page 3, line 20 through page 4, line 1.

Following: "is" on page 3, line 20

Strike: the remainder of line 20 through "hours" on page 4, line

1
Insert: ":

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities"

Committee Vote:
Yes 10, No 1.

331056SC.Hss

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL VOTE

DATE

2/9/93

BILL NO.

HB 259

NUMBER

MOTION:

Do Pass As amended

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN		
REP. GARY FELAND, VICE CHAIRMAN		
REP. STEVE BENEDICT		
REP. VICKI COCCHIARELLA		
REP. JERRY DRISCOLL		
REP. ALVIN ELLIS		
REP. PAT GALVIN		
REP. SONNY HANSON		
REP. NORM MILLS		
REP. BOB PAVLOVICH		
REP. BRUCE SIMON		
REP. CAROLYN SQUIRES		
REP. BILL TASH		
REP. ROLPH TUNBY		
REP. CARLEY TUSS		
REP. TIM WHALEN		

unanimously

the assessment section was contained within the Bill, and it was designed to clarify who was the subject of an administrative assessment. He said HB 287 was the only bill before the Legislature specifically designating MCA 39-71(201). He said the concern of his organizations was that assessment costs were continuing to grow.

Senator Towe asked Chuck Hunter why the repealers dealing with PLAN 1 and PLAN 2 relief from liability had been taken out of the Bill. Mr. Hunter answered those sections were amended out because they were not used and should not be used. He told the Committee there may be problem of assessing the cost of the claim over time. Thus the section was taken out of the law.

Senator Towe asked if the self-insurers objected. George Wood answered they did not.

Senator Keating asked Chuck Hunter for a definition of "exclusive remedy." Mr. Hunter told the Committee this would be defined as the sole remedy that an employee has for getting benefits.

Senator Keating asked Chuck Hunter if an employer is uninsured, in accordance with state law, could the person not be sued for liability. Mr. Hunter answered the law specifically said if an employer is uninsured, the employer may be sued for liability.

Senator Keating said the Constitution provided that if an employer provided workers' compensation, the employer was exempt from liability. If an employer is uninsured, the employer could go to the uninsured account, pay double premiums, and be in accordance with state law. He said the uninsured provision was a remedy.

Mr. Hunter said within the uninsured provision in the Bill, the law provides where the worker may sue for damages through the civil court system.

Closing by Sponsor:

Representative Wiseman had waived his right to close.

HEARING ON HB 259

Opening Statement by Sponsor:

Representative Dore Schwinden, House District 20, told the Committee HB 259 was an act clarifying that an employee injured while participating in a recreational activity at the place of employment is not eligible to receive workers' compensation.

Proponents' Testimony:

Pat Melby, Montana Ski Areas Association, told the Committee several employees of ski areas that were skiing at the ski area of employment were injured on their days off, and were eligible for workers' compensation. The State Fund explained that Supreme Courts in other states had ruled situations such as this one be included under workers' compensation. The reasoning was that because the employee was skiing on a free pass that had been given to them as part of payment, the employee was in scope of employment. Mr. Melby explained HB 259 had originally only included ski areas, but had been amended to include all similar recreational facilities, such as a dude ranch or golf course. Volunteers would also be included in this law, but there would still be ways to cover a volunteer if an employer chose to do so.

Ken Hoovestol, Montana Snowmobile Association and the Montana Boating Association, rose in support of HB 259.

Kevin Taylor, Great Divide Ski Area, said the people he employed were mostly young people who skied aggressively and took risks. He said Great Divide Ski Area provided the employees a free season ski pass as a benefit of employment. Mr. Taylor said when the issue of HB 259 had arisen, he had spoken to his employees, and found they would not want to give up the free passes, and did not expect to receive workers' compensation benefits while skiing on their own time. He continued that the employees had said taking risks while skiing on their own time was their own choice, and shouldn't be a responsibility of the employer.

George Willit, Showdown Ski area, Neihart, said the ski area had workers' compensation premium rates go up when an employee filed a claim. The legislation may help curb some of the costs of the system. He said employees would rather have the free ski passes and not receive benefits than to have those privileges taken away.

Tim Prather, Red Lodge Ski Area, told the Committee his ski area had four workers' compensation claims filed within two years by employees who were injured on their days off while skiing.

Eleanor Hardgrove, a rancher from Kalispell, said people must take responsibility for their own actions. Both employees and employers are hurt from the current system because as premiums go up, the employer must forego some salary or employees. She said she would like the choice of whether or not to cover her employees she hired at the ranch on their time off.

Jim Tutwiler, Montana Chamber of Commerce, said there was a serious effort to get the workers' compensation system under control. Montana's standing in workers' compensation when compared to the other states is fairly even. When it comes to measuring cost-benefit ratio, the pay out on benefits as opposed to payroll, Montana ranks near the top. He said there needed to

be some way of controlling who could access and use the system. He said HB 259 would not subvert the workers' compensation system.

Jim Murphy, State Fund, said HB 259 clarified the laws dealing with recreational employment and activities.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Wilson asked George Willit if this workers' compensation situation was common. Mr. Willet answered this had happened across the state in many different areas.

Closing by Sponsor:

Representative Schwinden closed. He said Senator Christiaens would carry HB 259 on the Senate Floor.

ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. DATE 5/4/93

[illegible]

Attach to each day's minutes

DATE March 4, 1993

SENATE COMMITTEE ON Labor : Employment Relations

BILLS BEING HEARD TODAY: HB287 - Wiseman

HB 259 - Schwinden

PLEASE PRINT

Name

Representing

Bill
No.

Check One
Support Oppose

GEORGE T. BENNETT	MONT. BANKERS ASSN	287	X	
JOCK ANDERSON	Mt. League of Soc Inst	287		X
Pat Melby	MT. Ski Area Ass'n	259	✓	
GEO WILLET	Schwinden Ski Area	259	✓	
TIM PRATHER	Red Lodge Mountain	259	✓	
Dore Schwinden	Dist #20	259	✓	
Chuck Hunter	DOLF	287	X	
Jamie S. Van Riper	self	287	X	
Ray Barnicoat	MACO	287	X	
Gill Christianson	MSG - WCRP	287	X	
George	Int. Self Insurance Assn	287	X	
OWEN TWILZER	mt & COUNCIL	259	✓	
Maureen Benmark	Am. Ins. Assoc.	287 259	✓	
Kelly Williams	MPCI/Entech	287	✓	
Jim Murphy	State Fund	259	✓	
Don Walker	US WEST	287	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Mar 4

SENATE COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

BILLS BEING HEARD TODAY: HB 257 & HB 259

Name	Representing	Bill No.	Check One	
			Support	Oppose
Bill Wiseman	HD 33	287	☒	☐
Kevin Taylor	Great Divide Skiing Co	259	☒	☐
Ken Hueston	MT Snowmobile Assn. MT Boating Assn.	259	☒	☐
Roger Tippy	MT Independent Bankers	287	☒	☐
Ellen Hargrave	Hargrave Ranch	259	☒	☐
Ken Cox	MMIT-MSGIA-MACO	287	☒	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXECUTIVE ACTION ON HB 259

Motion\Vote:

Senator Aklestad moved HB 259 BE CONCURRED IN. The Motion CARRIED UNANIMOUSLY, with Senator Wilson voting YES by proxy.

Senator Christiaens was assigned to carry HB 259.

EXECUTIVE ACTION ON HB 472

Motion\Vote:

Senator Keating moved amendments HB047201.AEM be adopted. The motion CARRIED UNANIMOUSLY, with Senator Wilson voting YES by proxy.

Motion:

Senator Keating moved HB 472 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Lynch asked if the employee could set the employee's own hours. Senator Towe answered this provision had been taken out of HB 472.

Senator Lynch asked that someone clarify that if an employee could not set the hours, that employee would not receive overtime either. Senator Towe said he was correct.

Senator Lynch said without HB 472, the employer had more salary protection. Without the Bill, the employee would get paid overtime, but with the Bill, the employer would be exempt from paying the employee overtime in some cases.

Senator Keating explained that without HB 472, the employer would not let the employee work overtime. The employer would not allow the employee to go beyond 40 hours per week, in order to improve commissions.

Senator Towe explained under HB 472 if the employee earns in a month what would average out to \$6 per hour, or earns more than half the salary in commissions, the employer would not have to pay overtime. If these exceptions do not apply, the employer has to pay overtime.

Vote:

The Motion HB 472 BE CONCURRED IN CARRIED, with Senator Keating, Senator Towe, Senator Burnett, Senator Blaylock, and Senator

ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. DATE 3/9/93

[illegible]

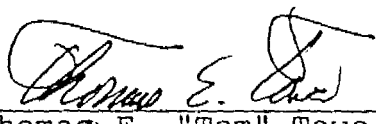
Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 259 (first reading copy -- blue), respectfully report that House Bill No. 259 be concurred in.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

m- Amd. Coord.
W Sec. of Senate

Christiaens
Senator Carrying Bill

540947SC.Sma